IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 25 OF 1998
AND
CROSS OBJECTION NO. 3 OF 1998

Gopal Builders & Developers,
erstwhile Partnership Firm,
and now a Proprietary concern
of Mr. Narottam Jadhavji Thakkar,
major in age, having its Office at
Bhanav Apartments, 4th floor,
Near Shri Mahalaxmi Temple,
Panaji, Goa. ... Appellant/Original Defendant

versus

Mrs. Maria Santana Julia
Maximiana Pulquerinho Azavedo
D'Silva alias Julia D'Silva,
widow of late James D'Silva,
major, residing at JU-JAM,
La Campala Colony,
Panaji, Goa. ... Respondent/Original Plaintiff

Mr. V. B. Nadkarni, Senior Advocate with Mr. J. Cardozo, Advocate for the Appellant.

Mr. V. K. Bodke, Advocate for the Respondent.

CORAM : N. A. BRITTO, J.

DATE OF RESERVING
THE JUDGMENT : 5TH MAY,2004.

DATE OF PRONOUNCING
THE JUDGMENT :10TH JUNE,2004.

J U D G M E N T

The Plaintiff as well as the Defendant have challenged the Judgment/Decree dated 18th September, 1997, of the learned Civil Judge, Senior Division, Panaji, in Special Civil Suit No.176/1994/A.

2. The Defendant has filed the Appeal challenging the Decree in the suit against the Defendant in the sum of Rs.6,00,000/-. The Plaintiff has challenged the said Decree in the Cross Objections filed by her in not awarding to the Plaintiff pre-suit interest of Rs.3.24,000/- and further interest in the said principal sum of Rs.6,00,000/-.

3. Some more facts are required to be stated to dispose of the Appeal filed by the Defendant and the Cross Objections filed by the Plaintiff.

4. There was an agreement dated 30th October, 1989 entered into between the Plaintiff and one Mr. Cajetan Cordeiro, Partner of the firm M/s Cisco Group. The said agreement was replaced by an agreement dated 15th October, 1990, between the Plaintiff, the Defendant and the said firm M/s Cisco Group. Under the said agreement dated 15th October, 1990, the liability to pay Rs.7,00,000/- to the Plaintiff was taken over by the Defendant. The relevant clauses of the said agreement read as follows:-

> "2. The Second Party(the Defendant) shall pay to the First Party(the Plaintiff) the said balance consideration of Rs.7,00,000/- due to the First Party from Mr. Cajetan Cordeiro and consequently the Third Party, in the following manner:-

(i) Rs.1,00,000/- on execution of these presents, the receipt of which the First Party do hereby admits and acknowledges.

(ii) Rs.6,00,000/- within a period of six months from the date of execution of these presents.

However, if due to unforseen circumstances the payment as mentioned under Clause 2 Sub-Clause (ii) could not be effected by the Second Party, the same shall be made subsequently but within the period of 12 months from the date of execution of these presents.

(iii) The First Party shall accept the above said balance payment of Rs.6,00,000/- in parts or instalments also, if made in such manner by the Second Party.

5. The case of the Plaintiff was that inspite of repeated reminders, the Defendant failed and neglected to pay to the Plaintiff the balance of Rs.6,00,000/- within the stipulated period of 12 months and, therefore, the Plaintiff vide notice dated 27th July, 1994, called upon the Defendant to pay to the Plaintiff the aforesaid amount of Rs.6,00,000/- within seven days from the date of the receipt of the notice informing the Defendant that in default of payment as aforesaid, she will be filing the necessary recovery proceedings in the competent Court of law to claim the aforesaid amount of Rs.6,00,000/-

along with the interest thereon at the rate of 18% per annum from the date of default till effective payment.

6. The Plaintiff further stated that immediately after the receipt of notice dated 27th July, 1994, Mr. V. B. Nadkarni, Advocate, of Panaji, who is representing the Defendant as his Advocate, contacted Mr. V. K. Bodke, Advocate for the Plaintiff and informed him that the notice sent by the Plaintiff is received by the Defendant but, however, due to some death in the family of the Defendant some time is required to make the payment to the Plaintiff and requested not to seek recovery in the Court till 15th September, 1994.

7. The Plaintiff, therefore, filed the suit claiming that the cause of action in respect of the suit for the first time arose on 15th October, 1991, when the Defendant failed to make the payment of the balance amount of Rs.6,00,000/- within the period of 12 months and as stipulated under the agreement dated 15th October, 1991. The Plaintiff prayed for a Decree and Order directing the Defendant to pay to the Plaintiff a sum of Rs.9,25,000/-(Rs.6,00,000/- being towards the principal sum and Rs.3,24,000/- being interest from 15th October, 1991 till the date of the suit and Rs.1000/- being the cost of the notice) together with interest thereon at the rate of 18% per annum on the principal amount of

Rs.6,00,000/- from the date of the suit till payment.

8. It appears, that the Defendant sought several adjournments and a last opportunity was given to the Defendant to file written statement on 22nd June, 1995, but on 12th July, 1995, the Defendant remained absent and the suit was ordered to proceed ex-parte against the Defendant. On 8th August, 1995, the Plaintiff was directed to file an Affidavit under O 19, R 1 C.P.C. which was filed on 13th September, 1995 and the case was fixed for Judgment on 31st October, 1995. On 16th September, 1995, the Defendant filed an application under O 9 R 7 C.P.C. which came to be dismissed on 29th January, 1996. On 14th March, 1996, the Defendant filed an application seeking permission to cross-examine the Plaintiff which came to be dismissed by Order dated 12th February, 1997 against which the Defendant filed a Civil Revision Application bearing No.36/97 to this Court dated 31st March, 1997, which was dismissed.

9. As already stated, the learned Civil Judge, Senior Division, Panaji, decreed the suit of the Plaintiff for the recovery of the principal sum of Rs.6,00,000/- but refused to grant any interest to the Plaintiff as claimed by her observing that the Plaintiff had failed to substantiate her claim for the said interest and further observing that interest could be

levied only under the provisions of C.P.C. on the amount decreed.

10. There are three points raised at the hearing of the Appeal/Cross Objections.

The first is that the claim of the Plaintiff was time barred. As regards this claim, Mr. V. B. Nadkarni, learned Senior Counsel on behalf of the Defendant has submitted referring to Clause 2(ii) of the agreement that the amount of Rs.6,00,000/- was payable within six months and there was no question of any grace period having been given to the Defendant to make the said payment. Mr. Nadkarni, learned Senior Counsel has submitted that there was no averment made by the Plaintiff either in the Plaint or in the Affidavit filed that there were any unforseen circumstances due to which the payment to be made would be extended by 12 months from the date of execution of the said agreement dated 15th October, 1990, and being so, the cause of action in favour of the Plaintiff had arisen 6 months from the date of execution of the agreement i.e. on or about 15th April, 1992 and the suit not having been filed by the Plaintiff within 3 years from the said date the same is time barred. Mr. Nadkarni, learned Senior Counsel has further submitted that the notice issued by the Plaintiff dated 27th July, 1994, was issued beyond the period of

limitation and, therefore, the same could not have extended the period of limitation in favour of the Plaintiff. Mr. Nadkarni, learned Senior Counsel referring to Section 18 of the Indian Limitation Act, 1963(Act, for short) and the case of **Sampuran Singh and others** v. **Niranjan Kaur and others**(1999) 2 SCC 679 has submitted that in this case there is no acknowledgement in writing and that the acknowledgement, if any, had to be prior to the expiration of the prescribed period for filing the suit and in case the limitation has already expired, it would not revive under the said Section and that only during subsistence of a period of limitation, if any, such document is executed, that the limitation would be revived afresh from the said date of acknowledgement. Again, referring to the case of **Ajab Enterprises** v. **Jayant Vegoiles and Chemicals Pvt.Ltd.**(AIR 1991 Bombay 35) Mr. Nadkarni, learned Senior Counsel has submitted that acknowledgement to be valid must be made before expiration of period of limitation under Section 18(1) of the Act. Referring to Section 3 of the Act and relying on the case of **Food Corporation of India and others** v. **M/s. Babulal Agrawal** (2004 AIR SCW 493) Mr. Nadkarni, learned Senior Counsel has submitted that a plea of limitation need not be raised and that it is the duty of the Court to check at the threshold whether the suit is barred or not though in all fairness it is always desirable that Defendant raises

it in pleadings so that other party may note the basis of such plea and in case such plea is not raised earlier, it should be raised at least at the appellate stage.

11. Relying on the case of Antonysami v. Arulanandam Pillai (AIR 2001 SC 2967) Mr. Nadkarni, has submitted that the fixation of periods of limitation are bound to be to some extent arbitrary and may at times result in hardship. But in construing such provisions equitable considerations are out of place and the strict gramatical, meaning of the words is the only safe guide.

12. On the other hand, Mr. V. K. Bodke, learned Counsel on behalf of the Plaintiff has submitted that the unforeseen circumstances contemplated in the agreement were those of the Defendant and that the Plaintiff was not expected to know what were the said circumstances since the same were within the knowledge of the Defendant, if any. Mr. Bodke, learned Counsel further submits that the Defendant was given a period of 12 months to make the said payment. Mr. Bodke, learned Counsel has placed reliance on the cases of **Shatzadi Begum Saheba and others** v. **Girdharilal Sanghi and others**(AIR 1976 Andhra Pradesh 273), **Union of India and others** v. **West Coast Paper Mills Ltd. and another**(2004 AIR SCW 838) and **Town Area Committee Raya** v. **Budh Sen**(AIR 1962 Allahabad 438).

13. The case of **Shatzadi Begum Saheba and others** v. **Girdharilal Sanghi and others**(supra) was a case where under the expression terms of agreement the money lent could be paid by the debtor at any time within 3 years from the date of the agreement and it was held that Article 113 of the Act was applicable and the period of limitation would begin to run from the date when right to sue accrued and the right to sue accrued on expiry of 3 years from the date of agreement and not from the date of execution of agreement and, therefore, the suit filed within 3 years after the period of repayment allowed to the debtor, would not be barred by limitation. In my opinion, on facts, this decision is of no assistance to the case of the Plaintiff.

14. The case of **Union of India and others** v. **West Coast Paper Mills Ltd. and another**(supra) was a case where exclusion of period of limitation under Sections 14 and 15 of the Act and Articles 58 and 113 of the Act was dealt with, and, the Hon'ble Supreme Court interalia observed that whereas in terms of Article 58 the period of three years is to be counted from the date when 'the right to sue first accrues' in terms of Article 113 thereof, the period of limitation would be counted from the date 'when the right to sue accrues'. The distinction between Articles 58 and 113 is, thus, apparent inasmuch as the right to sue may accrue to a

suitor in a given case at different points of time and thus, whereas in terms of Article 58 the period of limitation would be reckoned from the date on which the cause of action arose first, whereas, in the latter the period of limitation would be differently computed depending upon the last day when the cause of action therefor arose.

15. In the case of **Town Area Committee Raya** v. **Budh Sen**(supra) it was observed that upon a breach of contract an aggrieved party can have two remedies; he can either bring a suit for compensation or damages or he can even sue for the enforcement of the contract and the kind of suit he has to file can be decided from the relief he claims in the suit and if the party seeks a decree for the very sum that the opposite party had promised to pay but he has failed to pay, it is clearly a suit for enforcement of the agreement. The Court held that the suit filed was not a suit for compensation and was not governed by Article 115 of the Limitation Act but was governed by Article 120 and was within time of the Limitation Act, 1908.

16. There is no dispute that the suit filed by the Plaintiff was governed by the residuary Article 113 of the Act which provides a limitation period of 3 years when the right to sue accrues. There is no doubt that

Section 3 of the Act enjoins upon a Court to dismiss a suit or an appeal or any other application in case the same has been filed after the prescribed period of limitation although limitation has not been set up as a defence. As already seen from the terms of the agreement Rs.1,00,000/- were paid to the Plaintiff by the Defendant at the time of execution of the said agreement and there is no dispute about the same, and, Rs.6,00,000/- were required to be paid within a period of 6 months from the date of execution of the said agreement. There is no doubt that the agreement also provided that in case due to unforeseen circumstances the payment could not be made by the Defendant as contemplated by Sub-Clause (ii) of Clause 2 of the agreement the Defendant could make the same subsequently but within the period of 12 months from the date of execution of the said agreement. It is not the case of the Plaintiff nor that of the Defendant that the Defendant could not make the said payment of Rs.6,00,000/- within a period of 6 months from the date of the execution of the said agreement due to unforseen circumstances. The Plaintiff did plead some sort of a cause in para 7 of the plaint as to why the Plaintiff had not filed the suit earlier and thereafter reproduced the same in para 10 of the Affidavit in evidence but it has been rightly pointed out on behalf of the Defendant, that the averments made in para 7 of the plaint or for that matter in para 10 of the Affidavit are based on hearsay,

though the Plaintiff has sworn the same as true to her knowledge and, therefore, the same cannot be taken as giving an extended time to the Plaintiff to file the said Civil Suit. The question in this case is whether the payment ought to have been made by the Defendant to the Plaintiff within 6 months from the date of the agreement as contended by the Defendant or within a year from the date of agreement as contended by the Plaintiff. As already stated, the Plaintiff has pleaded in para 12 of the plaint that cause of action arose for the first time on 15th October, 1991 i.e. to say after the period of one year of execution of the said agreement between the Plaintiff, the Defendant and the said firm. The Plaintiff has made no reference to Clause 2(ii) of the said agreement by which the payment was required to be made by the Defendant within a period of 6 months. The nature of transaction must always depend upon the interpretation of the terms of the agreement. By virtue of Clause beginning with the word "however" and ending with "presents" below Clause 2(ii) of the said agreement the Plaintiff gave an option to the Defendant that in case he could not make the said payment due to unforeseen circumstances within a period of 6 months he could make the same within a year. In other words, it was an option given by the Plaintiff to the Defendant that in case he could not make the payment within 6 months, due to unforseen circumstances he could make the same within a

period of one year. Therefore, in my opinion, the Plaintiff could not be faulted in basing the cause of action, after one year of the execution of the said agreement between them. In fact, in my opinion, the Plaintiff was at liberty to file the suit within 3 years of the expiry of any of the said two periods. The Plaintiff under the agreement, was bound to presume that the Defendant had not made the payment because of unforseen circumstances and file his claim within 3 years, after the expiry of one year, from the date of agreement. Therefore, the suit filed by the Plaintiff could not be said to be time barred. In this view of the matter, the Defendant's Appeal is bound to fail.

17. The second point raised on behalf of the Defendant is regarding the valuation of Cross Objections made by the Plaintiff restricting the same to pre-suit interest of Rs.3,24,000/- only and not including pendente lite interest.

18. On behalf of the Plaintiff, it has been submitted by relying on various decided cases that pendente lite interest is always in the discretion of the Court and in case the same was not awarded by the learned Civil Judge, the same need not be valued for the purpose of the Appeal/Cross Objections.

19. Admittedly, the Plaintiff by virtue of prayer (A) of para 13 of the plaint sought for a decree for a sum of Rs.9,25,000/- together with interest thereon at the rate of 18% per annum. In other words, the Plaintiff did pray for pre-suit interest, pendente lite interest, and future interest on the said principal sum of Rs.6,00,000/-.

20. Admittedly, the Plaintiff has valued the subject matter of Cross Objections only in respect of the pre-suit interest of Rs.3,24,000/- only and it is the contention of Mr. Bodke, learned Counsel, that the pendente lite interest which is awarded under Section 34 C.P.C. and costs of Rs.1000/- which are awarded under Section 35 of C.P.C. need not be valued for the purposes of Cross Objections for payment of court fees as the grant of the same is within the discretion of the Court. In my opinion, this submission of learned Counsel Mr. Bodke, is well founded.

21. In the case of **Mithoo Lal** v. **Mt. Chameli and another**(AIR 1934 Allahabad 805) a Division Bench of Allahabad High Court observed that interest is awarded under Section 34 C.P.C. The Court may award it whether the Plaintiff claims it or not. In this respect, the Court's power stands on the same footing as its power to award costs to a successful party. It is well settled

rule that no court fee is payable on the amount of costs awarded by a decree appealed from, if no ground is specifically directed against the award of costs. The same principle is applicable to interest pendente lite which the Court may award under Section 34 C.P.C. These observations were made in a case where the suit was decreed by the trial Court for a certain sum of money with interest at the rate of 12% per annum up to the date of the suit and interest pendente lite was awarded at the same rate till the date of decree and thereafter at 6%. The Defendant appealed to the Court of the District Judge in impugning the correctness of the decree passed by the Court in the first instance. In his memorandum of appeal, no ground was specifically directed against the award of interest before suit or pendente lite. The appeal had sought the reversal of the decree in its entirety and the dismissal of the suit. The Bench also observed that the subject matter of the appeal should in the circumstances, be considered to be the principal amount of the suit and the interest up to the date of the suit and advalorem court fee was paid under Article 1, Sch.1, Court Fees Act, 1887, on the value of the subject matter of the appeal. The view that the Appellant ought to have paid court fee on the amount of interest accruing at the rate awarded by the Court between the date of the suit and the date of the decree, might have been correct if the Appellant had specifically challenged the decree

of the trial Court on the ground that no pendente lite interest should have been awarded but that was not the case.

22. The above view was followed by our High Court in the case of **State of Maharashtra** v. **Mishrilal Tarachand Lodha and others**(AIR 1962 Bom.52) observing that "where Plaintiff's claim to recover certain amount from the Defendant is decreed with future interest from the date of the suit till realisation, the awarding of future interest being under Section 34 C.P.C. and not the subject matter or the right which was in dispute between the parties in appeal, no court fee on the interest is required to be paid on the memorandum of appeal preferred against the decree".

23. The **State of Maharashtra** having **preferred** an Appeal against the above decision, the Hon'ble Supreme Court in (AIR 1964 SC 457) held that the amount of court fee payable depends on the amount or value of the subject matter in dispute in appeal. The Defendant-Appellant valued his claim at Rs.13,033-66 and paid the requisite court-fee on that amount. It is obvious, therefore, that he disputes in appeal that part of the decree which awarded Rs.13,033-66 against him on account of principal and interest due up to the date of institution of the suit. He did not dispute, according to the value of his

claim, the amount of interest which could be found on calculation for the period between the date of the suit and the date of the decree at 4% per annum on a sum of Rs.10,120/- as had been awarded under the decree. Whether his appeal is competent or not without his including this amount in his claim is a question different from that relating to the value of the subject matter in dispute in appeal. He does not dispute the decree for that amount and, therefore, the Court has not to decide about it and so this amount cannot be included in the amount of the subject matter in dispute in appeal covered by the relevant expression. None of his grounds of appeal refers specifically to this amount of interest between the date of the suit and the date of the decree. This makes it further plain that he does not question the propriety of awarding of future interest or the rate at which it was awarded or even the amount on which it could be awarded. It is not possible to say, in these circumstances, that the value of the subject matter in dispute in the appeal must include this amount of interest between the date of the suit and the date of the decree.

24. The Hon'ble Supreme Court then proceeded to formulate one question and answered the same. The question was on what principle are these amounts not treated as forming part of the value of the subject

matter in dispute in appeal and proceeded to answer the same by observing that such value is to be determined on the substantial allegations in the plaint or from the pleas in the memorandum of appeal with respect to the point in dispute between the parties and sought to be determined by the Court. Such are necessarily the points affecting the rights of the parties sought to be adjudicated by the Court. Claims not based on any asserted right but dependent on the decisions of the disputed right and reliefs in regard to which are in the discretion of the Court do not come within the purview of the expression 'subject matter in dispute in plaint or memo of appeal'.

25. There appears no good reason to make a distinction between the decreed amount of costs and that of pendente lite interest for the purpose of determining the amount of the subject matter in dispute in appeal. It is true that costs of a suit arise independently of the claim and are really those which are incurred by the plaintiff while the decree for the amount of pendente lite interest is directly related to the plaintiff's claim though its award is within the discretion of the Court, but this will not justify the distinction. The costs too, and particularly the costs on account of court-fee and counsel's fee, arise directly on account of the claim put forward in Court. The reason really is

that it is the value of the right claimed in the suit or appeal which is covered by the expression 'amount or value of subject matter in dispute' in Art.1, Schedule I, of the Act and that the Plaintiff has no right to get any of these amounts from the Defendant though the Court may, in its discretion, allow future interest and costs according to the circumstances of the suit in view of Sections 34 and 35 C.P.C. This principle equally applies to the non-inclusion of the decreed amounts of pendente lite interest in evaluating the subject matter in dispute in appeal as that too is awarded in the exercise of its discretion by the Court and the Plaintiff has no right or claim for that amount against the Defendant.

26. It is obvious that if the Defendant-Appellant succeeds in establishing to the satisfaction of the appellate Court that the decree in the principal and interest up to the date of the suit is bad in whole or in part, that will itself lead the appellate Court to exercise its discretion with respect to the amount of costs and future interest in such a way that if the Plaintiff's claim is dismissed in toto, he will not be awarded any future interest or any costs of the suit or appeal and that in case his claim succeeds in part, the amount of future interest and costs decreed in his favour would be appropriately modified by the appellate Court. The Defendant-Appellant has, therefore, no reason to

appeal against the decree for costs or the decree for future interest unless he disputes those amounts wholly or partially for certain reasons. If he disputes expressly the propriety or correctness of the decree with respect to the costs or pendente lite interest independently of the claim to the subject matter in the trial Court he will have to pay court fee on the amounts challenged as in that case he does dispute those amounts in appeal and, therefore, those amounts do come within the expression 'value of the subject matter in dispute in appeal'.

27. In the light of the observations made in the above decided cases no fault could be found in the Plaintiff's valuation of the Cross Objections.

28. The third point for consideration is whether the Plaintiff was entitled for any interest although the said agreement did not provide for the same. The learned Civil Judge, Senior Division, Panaji, wrongly observed without any application of mind that the legal notice did not make a mention about the said amount of Rs.9,25,000/-. In fact, in the said legal notice, the Plaintiff claimed the balance amount of Rs.6,00,000/- with interest at the rate of 18% per annum from 15th October, 1991. The learned Civil Judge, Senior Division, Panaji, further observed that except taking a plea in the

plaint, the Plaintiff had not substantiated as to how the Plaintiff was entitled for such interest on the said sum of Rs.6,00,000/-, and, in my opinion, the learned Civil Judge, Senior Division, cannot be entirely faulted. I say so because the provisions of the Interest Act,1978 do not appear to have been brought to the notice of the learned Civil Judge, Senior Division, Panaji inasmuch as there is not even a slightest reference to the said provisions in the grounds taken in the memorandum of Cross Objections. Nevertheless the claim for interest by the Plaintiff deserves to be considered by this Court.

29. Section 3 of the Interest Act, 1978, reads as follows:-

> "3. Power of the Court to allow interest:-(1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say.-
>
> (a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then , from the date when the debt is payable to the date of

> institution of the proceedings;
>
> (b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings:
>
> Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings interest shall not be allowed under this section for the period after such repayment."

30. There can be no two opinions that the Plaintiff sought to recover a debt payable to him by the Defendant by virtue of a written instrument namely the said agreement dated 15th October, 1990 and, therefore, the case of the Plaintiff was covered by Clause A of Section 3 of the Interest Act, 1978. The interest payable to the Plaintiff ought to have been at a rate which the Court considered reasonable. The only prohibition which comes in the way of the power of the Court is that such rate should not exceed the current rate of interest.

31. In the case of **B. S. Rajput** v. **M/s. The Cellar and another**(AIR 1993 Karnataka 9) it was held that the Plaintiff was entitled interest at the rate of 15% per annum for the period from the date of service of notice on the Defendant to the date of filing of the suit. The case related to a period from 28th October,

1984 to 8th October, 1985 and the Bench held that 15% per annum was the just interest payable as that was the maximum current rate which was being paid by the Schedule Banks.

32. In the case of **Yogesh Kant Bhageria** v. **Deepak Jain**(AIR 2000 Delhi 42) a Division Bench of Delhi High Court observed that in order to attract Section 3(1) of the Interest Act, 1978, it is sufficient that either Clause (a) or Clause (b) of the Act is satisfied and both the Clauses are not required to be satisfied. If Clause (a) of the Interest Act is applicable in that eventuality interest will be payable from the date the debt became due. However, if Clause (b) is applicable, then the interest becomes payable from the date on which written notice is served claiming or demanding interest. It was the case where loan amounts were paid through cheques against written receipts and there was no contract regarding payment of interest. The case pertained to the year 1986. The Division Bench, therefore, observed that the Plaintiff was entitled, considering the definition of the expression "current rate of interest" as contained in Clause (b) of the Interest Act, interest at the rate of 12% per annum from the date of demand till the filing of the suit and additional interest at the same rate till the suit was decreed and thereafter at the rate of 6% per annum from the date of decree till realisation.

33. The case of **Oil & Natural Gas Corpn. Ltd.** v. **State Bank of India**(AIR 2002 Bombay 32) pertained to a Bank Guarantee and this Court observed that a debt becomes due upon invocation of a Bank Guarantee. Since the debt becomes payable upon the invocation, the jurisdiction and power of the Court to award interest in terms of the provisions of Section 3 of the Interest Act, 1978, are attracted and the Court is, therefore, empowered by the provisions of Section 3(1)(a) to award interest at a rate not exceeding the current rate of interest. The Court, therefore, proceeded to award to the Plaintiff interest at the rate of 12% per annum from 1st October, 1993 until the date of the suit(12th March,1996) and to the same rate from the date of filing of the suit until payment or realisation as well as costs of the suit.

34. It is, therefore, obvious that the Plaintiff, was wrongly deprived of interest by the learned Civil Judge, Senior Division, Panaji, by brushing aside the provisions of Section 3(1)(a) of the Interest Act, 1978. There is no doubt that there is no evidence before this Court as to what was the current rate of interest for the period the Plaintiff claimed interest. The interest would certainly not be less than 12% for the period from 15th October, 1991 in case it was 12% for the period from 12th March, 1996.

35. I am, therefore, of the opinion that it would be just and proper that the Plaintiff is awarded interest at the rate of 10% not only from 15th October, 1991(pre-suit interest) but also at the same rate from the date of the suit till effective payment.

36. In view of the above, the Appeal is hereby dismissed with costs. The Cross Objections are allowed and the Plaintiff will now be paid by the Defendant in addition to the said principal sum of Rs.6,00,000/- as decreed by the learned Civil Judge, Senior Division, Panaji, interest thereon at the rate of 10% from 15th October, 1991 until payment.

N. A. BRITTO, J.

RD.